

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

*Cleveland Bakers & Teamsters Health & Welfare Fund
and Pipe Fitters Local Union No. 120 Insurance Fund v.
Purdue Pharma L.P., et al.,*
Case No. 18-op-45432 (N.D. Ohio)

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF PLAINTIFFS
CLEVELAND BAKERS AND TEAMSTERS HEALTH AND WELFARE FUND AND
PIPE FITTERS LOCAL UNION NO. 120 INSURANCE FUND'S OMNIBUS
MEMORANDUM IN OPPOSITION TO (1) MANUFACTURER DEFENDANTS' JOINT
MOTION TO DISMISS THE AMENDED COMPLAINT; (2) DISTRIBUTOR
DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT; AND
(3) MOTION TO DISMISS COMPLAINT BY DEFENDANTS WALMART INC., CVS
HEALTH CORP., RITE AID OF MARYLAND, INC., AND WALGREENS BOOTS
ALLIANCE, INC.**

Plaintiffs Cleveland Bakers and Teamsters Health and Welfare Fund and Pipe Fitters Local Union No. 120 Insurance Fund (hereafter, collectively “Plaintiffs”) respectfully submit this Notice of Supplemental Authority in support of their Omnibus Memorandum in Opposition to (1) Manufacturer Defendants’ Joint Motion to Dismiss the Amended Complaint; (2) Distributor Defendants’ Motion to Dismiss the Amended Complaint; and (3) Motion to Dismiss Complaint by Defendants Walmart Inc., CVS Health Corp., Rite Aid of Maryland, Inc., and Walgreens Boots Alliance, Inc. (ECF No. 33; MDL 2804 ECF No. 893), to apprise the Court of the United States Ninth Circuit Court of Appeal’s recent decision in *Painters and Allied Trades Dist. Council 82 Health Care Fund v. Takeda Pharm. Co. Ltd.*, 943 F.3d 1243 (9th Cir. 2019) (attached hereto as Exhibit A), with regard to the issue of the third-party payor (“TPP”) plaintiffs’ successful pleading of proximate cause in a RICO case against a pharmaceutical company defendant.

In *Painters & Allied Trades*, the court determined the TPP plaintiffs met the RICO proximate cause requirement when they alleged they would not have paid for their patients’ prescriptions but for defendant’s omitted mention of a drug’s known safety risk. In reaching its decision that proximate cause was adequately pled, the Ninth Circuit relied on the decisions of the First and Third Circuits in *Neurontin*¹ and *Avandia*.²

¹ *In re Neurontin Mktg. & Sales Practices Litig.*, 712 F.3d 21 (1st Cir. 2013).

² *In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, 804 F.3d 633 (3d Cir. 2015).

The Ninth Circuit agrees with the First Circuit in *Neurontin*, which rejected the argument that there were too many steps in the causal chain between the manufacturer's misrepresentations and the TPP's alleged injury in paying for the prescriptions.³ The Ninth Circuit further agrees with the Third Circuit's holding in *Avandia* that, despite the presence of intermediaries, the plaintiffs' alleged injury had a direct relation to the alleged RICO violation.⁴ The First, Third, and Ninth Circuits are now in alignment in rejecting the argument that there are too many steps in the causal chain between the manufacturer's misrepresentations and the TPP's alleged injuries.

DATED: February 14, 2020

Respectfully submitted,

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³ *Painters & Allied Trades*, 943 F.3d, at 1255.

⁴ *Id.* at 1256.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 2020, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF System. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF Systems.

s/ Aelish M. Baig
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